IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1703 OF 2000.

Iliyas Yusuf Naikwadi]
Indian Citizen, Aged adult]
residing at 5883, High School]
Road, Miraj, Taluka Miraj]
District Sangli.] Petitioner.

versus

1. The State of Maharashtra]

2. Primary Education Department]
Zilla Parishad Sangli]

3. Education Officer (Primary)]
Zilla Parishad, Sangli] Respondents.

Shri B.S.Walimbe i/by Shri R.V.More, Advocate, for the petitioner.

Mrs.M.P.Thakur, AGP, for the Respondents.

CORAM : R.M.S.KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED : 31st AUGUST 2006.

ORAL JUDGMENT [PER R.M.S.KHANDEPARKAR, J.]

1. The petitioner challenges the communication dated 18.3.2000 by which the petitioner's claim for pensionary benefit has

been rejected. The petitioner further seeks directions to the respondents to grant him all the pensionary benefits along with interest thereon.

2. The petitioner was appointed and worked as Urdu Primary Teacher in the school run by the Respondent No.1 from 20.9.1955 to 17.9.1965. The petitioner thereafter was promoted as Education Extension Officer (Urdu) and on 4.1.1978, due to some personal problem, the petitioner resigned from the said post. In all, the petitioner rendered 22 years of continuous service and as it exceeds minimum period of ten years, the petitioner claimed pensionary benefit. The petitioner sought two reliefs in that regard, consequent to the decision delivered by this Court on 18.12.1998 in the matter of some other persons. The claim, however, was rejected by the respondents on the ground that the petitioner had not retired from the service but the petitioner had resigned from the service and in terms of the law in force at the relevant time, he was not entitled to claim pensionary benefit. Hence the present petition.

3. The fact that the petitioner had resigned on 4.1.1998 is not in dispute. It is also not in dispute that under the relevant provisions of law in force at the relevant time, there was no specific provision entitling the person resigning from the service to claim pensionary benefit. The contention on behalf of the petitioner, however, is that the resignation tantamount to voluntary retirement and, therefore, since the respondents have granted pensionary benefit to the persons who have voluntarily retired and there being specific resolution ensuring the right to pensionary benefit for those who take voluntary retirement, the same principle should apply to the case of voluntary retirement by the employee. So applying the same principle, the petitioner also should be granted pensionary benefit. Attention is drawn to G.R. dated 21.7.1983 in that regard. Reliance is also sought to be placed upon the decisions in the matters of **Cecil Dennis Solomon and another v/s. Reserve Bank of India and another,** reported in **(2002(2)Mh.L.J. 956); M/s.J.K.Cotton Spg.and Wvg.Mills Company Ltd. Kanpur v/s. State of U.P. and others,** reported in **(AIR 1990 SC 1808); Union of India and others sv/s.**

Ltd.Col.P.S.Bhargava reported in **(AIR 1997 SC 565)** and; **Trimbak s/. Sangramappa Kadge v/s. The State of Maharashtra & ors.** reported in **(2002(4) ALL MR 114)**.

4. On the other hand, the learned AGP submitted that the relevant rules regarding pensionary benefit, which would be applicable to the matter in hand, would be the rules which were prevalent on the day on which the petitioner had resigned. At the relevant time there was no provision for grant of pensionary benefit to those employees who had resigned from the service and, therefore, the petitioner's claim cannot be entertained. Drawing attention to the decision in the matter of **UCO Bank and others v/s. Sanwar Mal,** reported in **(AIR 2004 SC 2135)**, it was submitted that the G.R. of 1983 cannot be applied to the petitioner's case, as the same was issued much after the date of resignation by the petitioner and in that connection reliance was placed in the decision of the Apex Court in the matter of **Baburam v/s. C.C.Jacob and others,** reported in **(AIR 1999 SC 1845).** She has further submitted that though the petitioner resigned in

the year 1978, the present petition has been filed nearly 22 years after his resignation without any justification for laches. Hence, the petition should be dismissed. Reference has also been made to Rule 46 of the Maharashtra Civil Services (Pension) Rules 1982 which provides that "Resignation from a service or a post entails forfeiture of past service" and, therefore, it was submitted that the claim for pensionary benefit is not maintainable.

5. As already observed above, the petitioner had resigned from the service on 4.1.1978. At the relevant time the rules regarding pension applicable to the government employees were comprise under Bombay Civil Services Rules and the matters relating to pension were dealt with under Chapter XI thereof. Perusal of various rules comprised under the said chapter shows that none of the rules provided for pensionary benefits to the person who had resigned from the service. Rule 186 (a) thereunder provided that "Government servant who is removed or required to retire from the government service for misconduct or insolvency shall be granted no pension other than a compassionate pension." Clause (b) of Rule

186 provided that "A Government servant who is removed or required to retire from Government service on the ground of inefficiency shall, if he be eligible for a superannuation or retiring pension, be granted such pension. If he be not eligible for a superannuation or retiring pension, he shall be granted no pension other than a compassionate pension". Rule 250 provided that resignation of public service would constitute an interruption of service. Subclause (c) of clause (3) of Rule 250A provided that "Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary service in which counts in full or in part, is not a resignation of public service." In other words, only in case resignation to take up another appointment with proper permission was considered as not amounting to a resignation of a public service. The rule therefore makes specific exception in relation to resignation tendered with permission to join another service, but in all other cases, it remains to be a resignation of public service.

6. The Apex Court in the matter of UCO Bank and others v/s Anwar Mal, while dealing with the

meaning and scope of and the differentiation between the terms "resignation" and "retirement", held thus :-

> "We find merit in theses appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. **The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently.** Under the Regulations the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation, it is a self financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. **Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service.** Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the bank, Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. further, there are different yardsticks

> and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof.
>
> (Emphasis added.)

The Apex Court has, therefore, clearly distinguished between act of "resignation" from the act of "retirement" and has held that resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains such relationship for the purpose of availing retiral benefits.

7. Taking into consideration the provisions of law relating to the pensionary benefits as were prevalent at the time of petitioner’s resignation and the law laid down by the Apex Court on the meaning of terminology of like "resignation" and "retirement", an inevitable conclusion which has to be drawn is that a person who had resigned in the year 1978, in the absence of pensionary benefit being made available under the statutory provision to such person, could not claim such pensionary benefits. In view of complete cessation of relationship of master and servant on account of tendering of resignation, there leaves no scope for claiming pensionary

benefits from the master. In case of retirement, however, such relationship continues for the purpose of claim of retiral benefit. Since the petitioner, in the case in hand, had not retired, but had resigned from the service, his case squarely falls under the 1st part of the ruling of Apex Court which would mean that the relationship of servant and master between the petitioner and the respondents had come to a complete cessation on 4.1.1978 and there was no scope for the petitioner to claim retiral benefit thereafter.

8. As far as Rule 46 is concerned, to which attention was drawn by the learned AGP, in our considered opinion, neither Rule 46 nor other rules from the Maharashtra Civil Services (Pension) Rules 1982 will have application to the matter in hand. Undisputedly, some rule came into force from 15.8.1982 much prior to the date of resignation by the petitioner. The law on the point that unless there is clear intention of the legislature to make the law applicable retrospectively, question of granting benefit even available under the said Rules to the petitioner does not arise. It is nobody’s case

that the said provision of the said rules are applicable retrospectively and in fact, at the relevant time, there was specific provision dealing with the matters relating to pensionary benefit, under which the petitioner's case stood completely excluded for such benefits.

9. The learned advocate for the petitioner has also fairly conceded that the decision of the Division Bench of this Court in the matter of Cecil Dennis Solomon and another v/s. Reserve Bank of India and other was set aside by the Apex Court and the decision in that regard is in the Matter of **Reserve Bank of India and another v/s Cecil Dennis Solomon and another** reported in **(2004) 9 SCC 461).** The Apex Court while setting aside the said decision has clearly ruled that the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Further it has held that though the voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service, they operate differently and, one of the basic distinctions is that in case of resignation it can be tendered at any time, but in case of

voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service and, other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same are not denied.

10. As regards the decision of the Apex Court in M/s.J.K.Cotton Spg. and Wvg. Mills Company Ltd Kanpur v/s. State of U.P. and others, that was a case where it was held that, the meaning of the term "resignation" as found, does not amount to retrenchment and, therefore, when an employee voluntarily tenders his resignation, it would be an act by which he voluntarily gives up his job and such a situation would be covered by the expression voluntary retirement within the meaning the said expression under the U.P Industrial Disputes Act, 1947. It is pertinent to note that Section 2(s) of the U.P. Industrial Disputes Act, 1947 clearly defines that "'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include - (i) voluntary retirement of the

workman; or (ii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf. Apparently, the decision of the Apex Court was bearing in mind the definition of the term 'retrenchment' which specifically provided that the retrenchment would not include voluntary retirement of the workman. Obviously there was specific clause regarding voluntary retirement of the workman and in that context voluntary retirement was held to include action of resignation. That was in the facts, and the law as contemplated under the U.P.Industrial Disputes Act which has no application to the case in hand.

11. In Lt.Col.P.S.Bhargava's case the Apex Court was dealing with Regulation 16 (a) of the Army Pension Regulation. Undisputedly, there is no provision in the said Rules similar to those provisions under Regulation 16 in the Army Pension Regulation. The decision of the Apex Court in relation to Regulation 16 of the Army Pension Regulation is of no help to the petitioner.

12. The reliance upon the decision of the Trimbak s/o Sangramappa Kadge is also thoroughly misplaced. That was a decision in relation to the provisions of law comprised under the Maharashtra Civil Services (Pension) Rules, 1982 and that too in the cases of voluntary retirement and not pertaining to resignation.

13. For the reasons stated above, therefore, we do not find any case is made out for interference in the impugned communication nor for grant of any relief sought for and, hence the petition fails and is dismissed. Rule is discharged. No order as to costs.

[R.M.S.KHANDEPARKAR, J]

[NARESH H. PATIL, J]